

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

IP CO., LLC, d/b/a INTUS IQ,

Plaintiff,

v.

**ONCOR ELECTRIC DELIVERY CO.,
LLC, et al.,**

Defendant.

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CIVIL ACTION NO. 2:09-CV-37

ORDER

Before the Court is the parties' Joint Motion for Entry of Protective Order and Resolution of the Parties' Alternative Positions. Dkt. No. 105. The Court substantially granted this Joint Motion on August 4, 2009. Dkt. No. 108.

As to the parties' dispute regarding production of source code, the Court rejects Plaintiff's proposal that source code of a party be made available "at the offices of *any* of [the Producing Party's] counsel of record . . . *at the Requesting Party's option*." Dkt. No. 105 at 2 (emphasis modified). Instead, the Court will adopt Defendants' proposal that source code of a party be made available "at the offices of [the Producing Party's] counsel of record." *Id.* at 3.

As to the parties' dispute regarding a prosecution bar, the Court rejects Plaintiff's proposal that "[t]his prosecution bar shall not apply to any other proceedings, including but not limited to interference or re-examination proceedings" *Id.* at 4. The Court also rejects Defendants' proposal that the prosecution bar be "a unilateral bar that prevents Plaintiff from using Defendants' confidential information in reexamination, reissue, or interference proceedings." *Id.* at 8. Instead, the Court will adopt a bilateral prosecution bar in which "Highly

Confidential — Outside Counsel Eyes Only” material shall not be disclosed to anyone substantively involved in any reexamination, reissue, or interference proceeding relating to the products or technologies at issue in this action. *See Document Generation Corp. v. Allscripts, LLC*, No. 6:08-cv-479, 2009 WL 1766096, at *3 (E.D. Tex. June 23, 2009); *Mercexchange, L.L.C. v. eBay, Inc.*, 467 F. Supp. 2d 608, 623 (E.D. Va. Dec. 18, 2006).

The Court also notes additional apparent differences between the parties’ proposals for the prosecution bar provision, such as the duration of the bar and applicability of the bar to outside experts. Because these apparent differences have not been presented to the Court with any arguments, the Court does not address them in this Order. The Court urges the parties to confer to resolve any disagreements not resolved by this Order. If the parties are unable to reach full agreement, the parties shall submit any remaining disputes to the Court.

The parties are hereby **ORDERED** to submit an Amended Stipulated Protective Order in accordance with the foregoing within 14 days of this Order.

IT IS SO ORDERED.

SIGNED this 10th day of August, 2009.

A handwritten signature in black ink, appearing to read "David Folsom", written over a horizontal line.

DAVID FOLSOM
UNITED STATES DISTRICT JUDGE